



STUDY

Platinum for the World Market, Iron Shacks for the Workers

Living and Working Conditions in Marikana Five Years After the Massacre

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After the Massacre

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Preface

The mining industry is central to the economies of many developing countries. Like in Marikana, miners and communities living near mines are often confronted with severe human rights problems ranging from labour rights violations, land evictions, water and air pollution, lack of consultation and the violent shut down of protest through police and public or private security forces. Mining companies take advantage of low or inadequately enforced labour, social and environmental standards. Bench Marks Foundation has been documenting these sorts of abuses in the mining industry in South Africa and other African Countries for many years.

A lot of the raw material from these mines is exported to countries like Germany and finds its way into products like cars or mobile phones. More than 50 percent of the platinum from Marikana Mine is bought by the German company BASF and used to produce catalytic converters for the car industry. The Bench Marks Foundation and Bread for the World (Brot für die Welt) have been monitoring the situation in Marikana and are members of the transnational campaign “Plough Back The Fruits”, which aims at informing the public in Europe about the poor working and living conditions of the mine workers and pressuring Lonmin and BASF to live up to their responsibility.

International standards like the UN Guiding Principles on Business and Human Rights require companies to respect human rights throughout their supply chain by identifying, mitigating and communicating human rights risks. In addition, both the British as well as the German government released National Action Plans on Business and Human Rights explicitly requesting their companies to implement these human rights due diligence steps, not only for their own business activities, but also with regard to their subsidiaries and supply chains.

This publication looks at the situation in Marikana five years after the massacre of 34 workers in 2012 and illustrates that Lonmin and BASF are still far off from living up to national and international standards on responsible business conduct.

The case is emblematic for the global mining industry and shows that corporate social responsibility is failing. To ensure that business does not have a negative impact on people and environment, governments need to strengthen their regulatory framework and strictly monitor business activities. This includes governments in Europe, which we urge to introduce mandatory human rights due diligence standards to ensure that their

companies do not negatively affect human rights in their operations abroad and throughout their supply chains. We want to especially thank the authors Aisha Bahadur from the Civil Society Research and Support Collective, based in Durban, South Africa, and Sarah Lincoln and Lisa Kadel from Bread for the World for undertaking this study for Bread for the World and the Bench Marks Foundation.

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Executive summary

Marikana will be forever known for the massacre that took place on 16th August 2012: 34 miners were shot by the South African police, 78 injured and hundreds arrested. The platinum miners had been striking for higher wages and better living conditions. The platinum mine is operated by Lonmin Western Platinum Limited and Eastern Platinum Limited, both fully controlled subsidiaries of the British mining company Lonmin; the world's third largest platinum producer. Main customer is the German chemistry company BASF.

The massacre shocked the nation and completely changed the political landscape in South Africa. In Marikana itself, however, not much has changed since the Massacre:

- There has been no justice for the people killed and injured. The government has offered no genuine apology. The police officers responsible have not been prosecuted and continue working in their jobs. The victims and bereaved families are still waiting for the compensation that the government has promised.



Marikana Mine is surrounded by informal settlements, which lack basic infrastructure like water, electricity, sanitation, schools, health centers and waste disposal.

- Due to persistent strikes and negotiations wages have increased slightly since 2012. Currently, rockdrillers at Lonmin earn a monthly basic wage of ZAR 10.296 (EUR 660). However, considering the annual inflation rate of 5 to 6 percent in South Africa between 2012 and 2017 the real wage is not significantly higher than in 2012.
- Approximately 30.000 people continue living in informal settlements around the mine. These consist of iron shacks without running water, sanitation facilities or electricity.

The situation in Marikana today is not only a failure of the South African government but also a story of corporate irresponsibility: In 2006, Lonmin submitted a legally binding Social and Labour Plan (SLP) in which it committed to convert 114 hostel blocks and build 5,500 new houses by 2011. In 2012, at the time of the massacre, Lonmin had only built three of the 5,500 houses they had committed to in their SLP. By 2017, Lonmin has converted the hostels but only built 500 additional apartments. Lonmin blames financial problems for the lack of implementation of the SLP and the inability to increase wages faster.

However, in 2007, the International Finance Corporation (IFC) of the World Bank approved a loan of 100 million dollars, which Lonmin never accessed. Lonmin has also been accused of systematically shifting profits to the parent company in London and to subsidiaries created for this purpose in the Bahamas. The German chemistry company BASF buys over 50 percent of the platinum sourced in Marikana. The platinum is used to produce catalytic converters for the car industry. The company claims to respect international human rights standards, including supply chain responsibility. However, so far BASF's handling of the situation in Marikana is not compliant with the UN Guiding Principles on Business and Human Rights: BASF has not adequately consulted workers, communities and civil society organisations to assess the human rights impact of Lonmin's operations. The audits commissioned in 2015 and 2016 are not public, methodology and results have not been communicated or consulted with NGOs, unions and communities. BASF is not sufficiently using its leverage over Lonmin to ensure the mining company fulfills its legal obligations towards the South African government. Long term contracts between BASF and Lonmin have recently been renewed and do not include any enforceable clauses on Lonmin's SLP obligations.

Introduction

“Marikana was a turning point for this country. It changed our political landscape. It showed there is a dissatisfaction of the working class for how it is represented. Marikana has changed everything, but not much has changed for us in Marikana.” Chris Molebatsi, Bench Marks Foundation

Marikana mine is a large platinum mine located in the Marikana district to the east of Rustenburg in the North West Province of South Africa. The mine is operated by Lonmin Western Platinum Limited and Eastern Platinum Limited, both fully controlled subsidiaries of the British mining company Lonmin; the world’s third largest platinum producer. In 2006 Lonmin’s former CEO Brad Mills expressed a vision to create “thriving comfortably-middle-class communities” in Marikana, whose well-educated children will have “well-paying jobs”. (Creamer, 2007)

That year Lonmin also signed a Social and Labour Plan (SLP) with the South African government as condition for its mining licence. The company committed to convert crowded hostels into decent bachelor and family apartment units and build 5,500 new houses. (CALS,

2012) In 2007, Lonmin managed to get support for its social targets by the IFC that made available USD 150 million for Black Economic Empowerment (BEE) and social uplift strategies.

Today, Marikana is known in South Africa and around the world for the massacre that took place five years ago, on 16 August 2012, when 34 striking mineworkers were shot and killed by the police. At least a further 78 workers were injured and hundreds were arrested. They had been fighting for higher wages and better living conditions. In 2012, Lonmin workers were earning significantly less than miners in the neighbouring mines. From the 5,500 houses promised, by 2012 Lonmin had only managed to build three show houses, most of the 32000 workers lived in shacks without electricity, sanitation or running water.



A mineworker walks to his shack after his shift at Marikana mine

The violent put down of the strike by the state shocked the nation and broke a trust that injustice and brutal violence endured during the apartheid era would never again be perpetrated by the state against its people. Demands for justice took root in Marikana and support for these has been reverberated by workers and communities across the country and the world. The Marikana Massacre completely changed the political landscape in South Africa and notably weakened the political support of workers and communities for the ruling party ANC (African National Congress).

But how much did the Marikana Massacre actually change in Marikana itself? This publication focuses on the situation in Marikana five years after the massacre. Despite a commission of inquiry appointed by the South African President, no police have been prosecuted for the deaths at Marikana, no compensation has been paid and no genuine apology issued. Lonmin continues to be hard-handed and tight-fisted in its approach to dealing with worker and community concerns and evasive on commitments, especially with regards to housing and social upliftment. The overwhelming majority of Lonmin's workers continue to be housed in shacks of corrugated iron built in tight clusters with limited access to piped water, poor sanitation facilities, inadequate refuse removal and lacking electricity connections.

Lonmin's main customer is the German chemistry company BASF, buying more than 50 percent of their annual production - in order to build catalytic converters for the German car industry. Though BASF claims to be world leader when it comes to supply chain responsibility, it only reacted to the situation in Marikana in 2016 after immense public pressure. Since then, BASF's efforts to influence their business partners and contribute to improving living and working conditions have been half-hearted. BASF is not prepared to actually put pressure on Lonmin. Cheap and reliable platinum seem to be by far the priority.

South Africa's New Gold

Mining has been central to the industrial development and economic growth of South Africa.

Platinum, coal and gold play a vital and important role in the South African post apartheid economy. Though Africa is known worldwide for its gold, the production of gold has declined drastically in the last decade with only 40 years remaining on gold resources. South Africa's top mining export today is platinum.

Nearly 70 percent of the world's platinum comes from South Africa and the country has over 300 years of reserves in platinum. (Statistics South Africa, 2017, Page 21) Lonmin is the fourth largest global producer of platinum after Anglo Platinum, Impala Platinum and Norilsk Nickel. (Bell, 2016) Lonmin's roots lie in colonial times and the general structure of using cheap

black labour force to extract precious resources and export them to Western countries where profit is made from them still exists today.

The country's mining sector had a workforce of 490,000 in 2015, including labour sourced through brokers and sub-contractors, of which 41 percent are employed in platinum mining. However, even the platinum sector has been losing jobs rapidly in the last years and is relying more and more on sub-contracting, which allows companies to circumvent agreements on wages and benefits. (Statistics South Africa, 2015) Most of the miners are migrant workers from so-called "labour-sending areas". They leave their families behind to work in the mines for low wages, under conditions threatening their health and safety.

Chapter 1

Review: The Massacre at Marikana

A rockdriller in a platinum mine works shifts of 8 hours drilling holes with a 40 kg drill hammer - harsh and dangerous work carried out deep underground. Fatal accidents are a regular occurrence, between January and June 2017 five rockdrillers died at work. (Lonmin, 2017) In 2012, Lonmin rockdrillers earned significantly less than rockdrillers at other platinum mines. Their basic pay without allowances was ZAR 5891 (EUR 580) compared to competitors Anglo's ZAR 6400 (EUR 630) and Impala's ZAR 7,194 (EUR 700). (AIDC, 2014, page 15) Impala had agreed to a significant wage increase after an unprotected strike by Rockdrillers and Anglo had also recently reviewed the low pay of rock drillers in light of the strike at Impala Platinum and had introduced a rock driller allowance. (AIDC, 2014) When rockdrillers at Lonmin heard of these developments they demanded a wage increase in June 2012. They opened with the demand of ZAR 12,500 (EUR 1200) and were prepared to be negotiated down to no less than ZAR 7,000 (EUR 690). However, the Lonmin management refused to negotiate with them as there was a two-year wage agreement in place. Workers did not feel adequately represented by the

National Union of Mineworkers (NUM), which was politically aligned to the ruling party ANC and had once been led by Cyril Ramaphosa, national executive member of the ANC and Non-Executive Director of Lonmin.

On 10th August 2012, the Rockdrillers at Marikana mine went on an unprotected strike. In the days leading up to 16th August, the situation was tense. NUM tried to break the strike in cooperation with Lonmin and striking workers were intimidated. This resulted in a violent conflict between striking workers, the NUM and the remaining workers. Ten people were killed, including two police officers and two security guards. By this time it was clear that it would not be possible to negotiate a solution with workers through the NUM. Despite this, Lonmin refused to speak to the striking workers directly. Instead, Lonmin's Non-Executive Director Cyril Ramaphosa described the strikers' actions as "dastardly criminal" and requiring "concomitant action" in emails to Lonmin Executive Board. He assured that he would call on senior government officials to intervene on behalf of his company (Sosibo, 2015). On 12th August 2012, Ramaphosa contacted the minister of police, Nathi Mthethwa,



On August 16th 2012, 34 workers were killed workers in Marikana and 78 injured by the police. Many were shot in the back, so far no police officers have been prosecuted.

successfully lobbying him to send more police officers to Marikana. (Alexander, 2017) By Tuesday 14 August, police presence had been scaled up dramatically and 3,000 strikers firmly established themselves at the rock outcrop, a small hill two kilometres west of the mine, locally referred to as Wonderkop Koppie.

As the striking workers had lost confidence in NUM, another trade union, the Association of Mineworkers and Construction Union (AMCU) and their president Joseph Mathunjwa got involved. AMCU had been present at the mine before but had mainly organized the contract workers.

The strikers still insisted that the management would speak to them. This was the message that Mathunjwa carried back to Lonmin several times but it went unheeded. A real chance to end the standoff was lost. Mathunjwa then went to the Koppie on August 16th, knelt down and asked strikers to prevent a bloodshed. After he left, Bishop Johannes Seoka, chairperson of Bench Marks Foundation, arrived at the Koppie hoping to mediate. But his efforts were rebuffed by Lonmin and the police, with the same message as had been conveyed before: workers should return to work first and Lonmin would then talk to them.

Moreover, Bishop Seoka was told he would not be able to return to the Koppie as it had been declared a

security zone. Worried about the strikers, Mathunjwa went back one more time to ask the strikers to retreat fearing that the police would kill them. Some were adamant to stay, but others dispersed increasingly when police began to circle the Koppie in razor wire. Seeing that they were being trapped, strike leaders decided it was time to leave. But it would prove too late for some, that were shot down minutes later. Strikers lay dead or wounded. Only an hour later paramedics, that were on stand-by, were allowed to attend to the wounded.

17 strikers were killed at Wonderkop Koppie this day. At another site a short distance away, the Small Koppie, police shot another 17 strikers hiding amongst the rocks in the aftermath of the initial killings. It is at this site that police action is most questionable and abhorrent; forensics revealing that strikers killed here were hiding, attempting to surrender or trying to flee. In the days that followed the community was under siege by the police, hundreds of workers were hunted down and arrested. All in all, 34 people were killed and 78 were wounded by police on 16 August 2012, in what would become known throughout South Africa and the world as the Marikana Massacre. A massacre, which the state and Lonmin referred to as a tragedy. (Marinovich, 2016)

Bench Marks Foundation

The Bench Marks Foundation (BMF) is a non-profit, faith-based organization mandated by the churches in South Africa. BMF's vision is to promote corporate social responsibility and socially responsible investment. Therefore, BMF monitors multinational corporations operating on the African continent, gives a voice to communities affected by business activities, documents abuses and brings media attention to these abuses. In the case of Marikana, BMF works closely with the widows of those killed in the massacre and demands compensation, but also analyses and demands improvement of the underlying working and living conditions that caused the strike. Bishop Seoka, a prominent figure in South Africa, is the chairman of BMF.

BMF is currently working on establishing an Independent Problem Solving Service for communities affected

by mining. The mechanism aims at prevention of conflict and early identification and speedy resolution of issues using facilitated dialogue, mediation and, as a last resort, arbitration or other alternative interventions. As communities lack access to information, knowledge and expertise on the obligations of mining companies, the initiative also includes the necessary support and capacity building of community participants through an Independent Capacity Building Fund. This initiative can only work long-term if the mining companies agree to contribute financing and constructively engage in the grievance process. This would also be in line with the UN Guiding Principles on Business and Human Rights which require companies to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted by their business activities (Principle 29). www.bench-marks.org.za

Chapter 2

Five Years after Marikana Massacre

Justice for Marikana

The Marikana Massacre shocked the whole South African nation. Workers and communities across the country demanded a thorough investigation of what had happened, persecution of those responsible, an apology by the state officials responsible and the compensation of the families of those killed. Today, five years after the massacre, justice is still far off: It took until 2015 for the report of a commission of inquiry to be completed and published. So far the state has not taken responsibility for what happened; victims are still waiting for compensation and not a single police officer has been prosecuted.

The Farlam Commission

Ten days after the massacre, South African President Jacob Zuma appointed a Commission of Inquiry headed by retired Supreme Court of Appeal Judge Ian Gordon Farlam to investigate the Marikana Massacre. Initially, the inquiry was meant to be completed within six months after the Massacre, but it soon became clear that the timeframe was inadequate. In June 2015, Zuma released the the concluding report to the public

The main findings of the commission were:

- that some strikers promoted conflict and confrontation that led to the deaths of Lonmin Security guards and non-striking workers and that taking up of arms and the use of violence by the strikers contributed to the situation at Marikana developing as it did.
- that the police strategy on 16th august was defective and that some of the police, who fired at the strikers at Wonderkop Koppie, exceeded the bounds of self-defence.
- that the police operation at the Small Koppie should have never taken place, that there was no proper command and control and that numerous shots fired there were not justifiable as self-defence.
- that Lonmin did not do its best to resolve the dispute between workers and the company and that Lonmin did not respond appropriately to the threat and outbreak of violence.
- that Lonmin did not take sufficient measures to ensure the safety of workers and security officers and insisting workers came to work put them at risk.
- that Lonmin “created an environment conducive to the creation of tension and labour unrest by failing to

comply with the housing obligations undertaken by its two subsidiaries in the SLPs on the strength of which it obtained new order mining rights.”

(*Farlam Commission, pages 556-561*)

Overall the Farlam report comes to the conclusion that strikers, the police and to a certain extent also Lonmin contributed to the massacre and recommends further investigations with a view to ascertaining criminal liability of the Police and the strikers. The Farlam commission has been widely criticized by NGOs and activists for being biased, blaming the victims while sparing people in power both at Lonmin and in the government, and ignoring important facts such as the violence committed by Lonmin security forces prior to the massacre. There was also criticism for the need for further investigations as the process already took three years and investigating what happened was the sole purpose of the Farlam commission. (Mines and Communities, 2015)



In commemoration of the workers killed at the Massacre critical shareholders, representatives from South African and European NGOs came together for a line-up with pictures of the deceased outside the shareholder meeting of Lonmin in January 2017 and BASF in May 2017. The picture shows Bishop Jo Seoka (right), chair of the Bench Marks Foundation and an activist from the miners union AMCU.

“We expected that with all the attention after the massacre, the social problems would be addressed in Marikana. A lot of work went into preparing for the commission of enquiry. We thought that communities would get to make submissions at the Farlam Commission. Then the President tampered with the terms of reference, so the commission achieved nothing,” Chris Molebatsi, community organizer at Bench Marks Foundation.

Compensation for the victims

A week after the Farlam Commission report was made public; the Legal Resources Centre (LRC) announced that lawyers representing victims of the massacre were preparing a lawsuit. (LRC, 2015) In November 2015, over 300 victims and bereaved family members filed claims against Lonmin, Deputy President Cyril Ramaphosa and the South African government demanding financial compensation for the loss of their family members, for injuries suffered and for unlawful detention and prosecution.

By March 2017, there were a total of 652 claims, including 285 compensation claims for assault, arrest, detention and malicious prosecution (totalling ZAR 870,959,735), six for injuries because of assault, arrest and detention (ZAR 19.8-million), 36 claims over injuries as a result of shooting (R100.9-million) and 325 claims for loss of support by families of miners fatally wounded” ZAR 179,286,500). The Minister of Police confirmed in March 2017 that government is prepared to settle for the demanded amount of ZAR 1,17 billion (ca EUR 83 Mio.). (Merten, Daily Maverick, March 2017) In July 2017, victims of the massacre are still waiting to be paid out as legal processes have not been concluded.

Lonmin itself did not adequately compensate the families either. Families of victims that were permanently employed by Lonmin received death benefits; however,

these were not extended to those families of victims employed by contractors, unemployed or foreign nationals (Marinovich, page 167). Little else has been done by Lonmin, apart from paying school fees for some of the victims’ children and allowing the widows of Marikana to take up employment at the mine as cleaners for the management offices or underground, a concession that had to be negotiated by lawyers representing these families. (SERI, 2015)

Restitution and Prosecution

No public apology has been made for the Marikana massacre from the state or Lonmin. There was a vague indirect apology from Ramaphosa in May 2017 during a speech at Rhodes University, where he said that language he used in emails was unfortunate and inappropriate, but he did not apologize for refusing to negotiate with workers or for calling more police. (Alexander, 2017) This apology was widely rejected in Marikana as disingenuous, but necessary as he vies for nomination as the presidential candidate in South Africa’s 2018 elections. (Alexander, 2017)



Chris Molebatsi works for Bench Marks Foundation as a community organizer in Marikana. He supports the communities to monitor Lonmin's behaviour and lobby for reform.



Ntombizolile Mosebetsane's husband was killed during the Marikana Massacre. Today she works as a cleaner at Lonmin.

So far nobody has been held criminally responsible for what happened at Marikana. In March 2017, the Independent Police Investigative Directorate reported to a parliamentary committee on the imminent prosecution of 72 police officers for their role in the massacre, but to date no charges have been brought. (Mahego, 2017)

Improving working conditions

The long struggle for better pay

Lonmin workers went on strike in August 2012 because they wanted better pay. Instead 34 lost their lives, many more were injured. The ZAR 12,500 (currently EUR 800) they had demanded as basic pay became symbolic for the struggle for a living wage and the tragedy of Marikana.

Five years later, in 2017, Rockdrillers are earning a basic monthly wage of 10,296 and the current wage agreement will lead to a basic monthly wage of ZAR 12,296 (currently EUR 780) by 2019. (Lonmin, 2016) However, due to the annual inflation rate that lay between 5 and 6 percent in South Africa from 2012 until 2017, real wages have not increased significantly. (Statista, 2017)

Widows of Marikana, extract from the speeches at the AGM BASF, Mannheim/Germany, 29 April 2016

- I, Mosebetsane, whose husband was killed at the massacre, am now working at Lonmin cleaning their yard. There are other widows who now work underground, in the same unhealthy, dangerous, noisy and dark situations where our husbands once worked. Working in this situation will lead us to die here, or go home with illnesses like TB or silicosis, or injuries, being retrenched to die at home.
- I am Agnes Makopano Thelejane. Lonmin says that they have given jobs to those families of their employees who died. But they say my husband who worked underground at the mine, was paid by some other company. Lonmin says they will not pay the legally required death benefits they pay for their own employees and they will not give me a job or help me send my children to school. They tell me to speak to this company I do not even know. Today, those of us who are excluded do not even know what our children will eat from day to day, our neighbors help us by giving us meals. We cannot buy school uniforms or fix the roof when it rains.

The current wage agreement did not come easy, but is the result of a long and enduring struggle of the union and the workers. After the massacre on 16 August 2012, the strike continued for more than a month with thousands more joining. Negotiations now included the AMCU and the government. It stalled several times. Eventually a deal brokered by Bishop Seoka who stepped in to mediate: workers agreed to end the strike on 18 September 2012 for a 22 percent wage increase and a return to work bonus of ZAR 2,000 (EUR 180). (Sosibo 2013)

However, after returning to work, workers did not actually receive the 22 percent wage increase. Lonmin included the previous wage deal agreed to before the strike, which was due in October, thereby reducing the additional increase to 12 percent. Lonmin also deducted the ZAR 2,000 (EUR 180) return to work bonus from the works salary, as if it was a loan. (AIDC 2015, p. 18)

The power of unions: rebuilding industrial relations with Lonmin

Increasingly evident during the strike and after was that workers lost confidence in the majority union NUM to represent them. NUM was politically aligned to the ruling party ANC and the union had once been led by Cyril Ramaphosa. After the massacre, Cyril Ramaphosa was accused of aiding the collusion between state forces and Lonmin that led to the tragedy. Workers rejected NUM and turned to the AMCU and the union president Joseph Mathunjwa, who was remembered for returning to speak to the striking miners before the massacre. A year after the massacre, on 14 August 2013 Lonmin recognised AMCU as the official majority union at Lonmin with two thirds representation. (Lonmin, 2013, p. 16) AMCU has been able to stabilise industrial relations at Lonmin, because it has earned the trust of workers. Sentiment amongst workers surveyed is that things have improved at the mine since 2012 and they have confidence in

AMCU to take up issues in a manner that includes them. AMCU has had some unpleasant tasks, including negotiations on possible retrenchments in 2015 which were resolved without industrial action. 5,200 jobs have been shed through means such as early retirement, redeployment and retraining. The union is growing rapidly, in June 2017, 22,000 Lonmin workers are AMCU members, which is 90 percent of permanent workers currently employed at the mine.

A mineworker speaks of marked improvements: *“It is very different now at the mine. Before 2012 we had no option but to follow instructions that were given, we worked long hours to meet targets. There was no freedom, we had to work until the job was finished. We were tired all the time. Now it is much better. The oppression is less; our work conditions have improved, our hours are better. And our wages are improved.”*

Workers felt betrayed and a year later AMCU was mandated to put the ZAR 12,500 (at that time 900) demand on the table at wage negotiations. Bargaining

resulted in a deadlock in November 2013 and workers went on a protected strike in January 2014. The strike went on for five months during which a long process of mediation was carried out to carefully manage the situation. Despite the many hardships of those five long months, the determination of workers to stay out on strike until demands were met was cathartic and perhaps necessary, an indignant retribution for the massacre as part of the collective grieving process. Although the strike strained already limited resources, workers received unwavering support from the community. The strike was the longest in South Africa’s history and whilst Lonmin took a major knock on production and sales volumes, workers and the community of Marikana were starving to the extent humanitarian organisations were helping to feed people. (Davis, 2012)

A three-year wage agreement was eventually signed in 2014 according to which every worker will receive a ZAR 1,000 (EUR 64) wage increase per year, a system in which workers earning the least benefit the most. Workers had come to distrust percentage increase wage settlements and felt more confident with this system. The living out allowance, a bonus paid to those not staying in accommodation provided by Lonmin, was also improved. (Lonmin-Amcu-Agreement, 2014)



A rockdriller at Lonmin works shifts of 8 hours, drilling holes with a 40 kg drill hammer. The work underground is dangerous, between January and June 2017 five rock-drillers died at work.

In the 2016 wage negotiations, Workers agreed to extend the agreement of ZAR 1,000 (EUR 64) increase per year for an additional three years until 2019 and a slight increase to the living out allowance. Currently, a rockdriller earns ZAR 10,296.00 (EUR 660) basic wage before allowances and bonuses, by the end of 2019, a rockdriller would be earning a basic wage of ZAR 12,296 (EUR 785). (Mtongana, 2017)

Contract workers

A major problem at the Marikana mine is the excessive use of contract workers for core and non-core functions. AMCU claims that there are over 40 contractors at the mine employing 5,000 to 10,000 contract workers at the mine. Contract workers are excluded from the collective bargaining agreement with Lonmin and paid less. In a discussion with a group of contract workers working at Lonmin, they reported that they are used for more dangerous tasks and are easily dispensed with if there are injuries. Contract workers also reported that contractors

would tell workers not to report injuries on the job as it would affect their relations with the mine company. One group interview participant was threatened with termination if he reported a work related health problem. (Group worker interview, Nkaneng June 2017)

Lonmin justifies the use of contractors: “*we primarily employ contractors because they (the contractors) believe they are able to profitably mine the shafts that we would have placed on care and maintenance. Contractors are also utilised where special skills are required (and Lonmin does not have these resources).*” (Lonmin, 2017)

AMCU however questions the necessity to use contract workers. The union claims most of the contract workers are not used because of their special skills but solely as a mean to save money and shift risks onto contractors and contract workers. AMCU therefore demands greater transparency on the decisions to use sub-contractors and the terms and agreements of these contracts. They believe a more cohesive, safer and committed workforce could be built by converting contract workers to permanent workers.



Patrick Moepadira, ACMU Coordinator at Lonmin

“I joined Lonmin as a miner in 2009. In 2012, I was working with four crews, in total we were about 60, about 20 were rockdrillers. I saw their conditions; the work was hard, the equipment was heavy, the noise unbearable, the water

chilling them to the bone and of course the wage is too low. The rockdrillers had a legitimate grievance; they physically endure pain for their labour, they were forced to work long hours, not considered as overtime and remained focussed on their bonus because their pay was not enough.

Today I coordinate the union activities. It is a task where you have to develop confidence quickly. I went from dealing with the shift boss underground to having discussions with the CEO. You need to be very awake when you are dealing with people that are more educated than you. When you are going underground for ten hours a day, you only know one aspect of the mine, there are issues that affect you that you

do not even know about. I am not shy to say that sometimes after engaging with management, I have to go and read up about something so I know what we are dealing with.

The power we have as a union is that the workers are behind us. This power can change lives. It is not about me, as a union we don't take any decision without consulting members first, no matter how small it seems. If management comes and says we want to change overalls from white to blue, well then we need to consult our members. Mandate comes first, it's our golden rule. Workers know that it is their voices that are driving change at the mine. But Lonmin must truly commit to transformation so that they don't lose patience. South Africa is one of the most unequal countries in the world. Addressing that inequality starts here in the workplace. I am from the shacks, my mother is a single mum. My brother and I have taken a long journey from technical college to decent jobs in mining. We are able to raise our young families while supporting our mother and extended family members. This is not the story that all mineworkers can tell, but it should be”.

Living conditions in Marikana

Background

The prevailing structures of labour and land ownership in South Africa are still heavily influenced by the legacy of apartheid. At the height of apartheid in 1980s under the policy guise of ‘equal but separate development’, more than half of the black population of South Africa had been pushed into ‘homelands’, sometimes also referred to as ‘tribal’ or ‘traditional’ land. The homelands were areas of no commercial value and mostly unsuitable for farming. Many sought to escape the abysmal poverty in these areas and would risk imprisonment to seek employment in cities and towns. Generations have been uprooted time and time again, so leaving home and breaking up families to seek employment and escape poverty and hunger is an accepted reality. Millions in the so-called labour-sending areas, in particular women, remain dependent on remittances. The situation is no different at Lonmin’s Marikana mine. Mineworkers were recruited from labour-sending areas in the Eastern Cape, Mpumalanga and Kwa-Zulu-Natal provinces as well as Lesotho and Mozambique. (Lonmin, 2015)

All the migrant mineworkers used to live in overcrowded hostels and the shared rooms packed as many

workers in as possible. There was no privacy and communal living areas were stark and impersonal. These mine hostels became symbolic of the dehumanisation of black workers under apartheid. The first wave of settlement of migrants in local communities around the mine came from a rejection of the hostel living conditions at the end of the apartheid era. Some mineworkers chose not to live in overcrowded hostels, opting to rent shacks in backyards within adjacent communities, many workers had no other option, because hostel space was limited.

Transformation was slow after democracy in 1994 and the National Union of Mineworkers demanded a Living Out Allowance (LOA) because hostels were overcrowded.

David illustrates: “When I started working at Lonmin, I first stayed at the Wonderkop hostels. It was terrible, we used to sleep eight people in a small room. There was no space for personal things, we had a bed and a small locker. There were communal showers and toilets. There was a canteen and a laundry service but only for our work suits. You had to wash your other clothes and stuff was always getting stolen. There was no privacy and already about half of the workers were staying out in shacks, they did not want to live there. When we started to get a living out allowance and I came to stay at the shacks. I paid ZAR 200 for the shack and could use the rest of the money for food, toiletries and to supplement my wages.”



A mineworker washing his clothes outside his home at Wonderkop informal settlement. There is no running water in the shacks and water needs to be fetched from communal taps in the neighborhood.



The roads in Wonderkop informal settlement are not paved. When it rains, mud and water mix with sewage and waste.

The Living Out Allowance (LOA) became a short cut for mining companies to address overcrowding in the hostels. The South African Chamber of Mines claims that mineworkers workers chose to live in shacks so that they would be able to supplement their wages (chamber of Mines, 2017), but mining companies gave the LOA knowing of the chronic shortage of decent housing and in particular rental stock in mining communities. Tens of thousands of miners took the living out allowance to supplement wages and remittances to their families and moved to local communities, mainly to informal settlements, further straining already limited resources and infrastructure. While most of the hostels have been converted to apartments today, the informal settlements persist.

Situation in settlements

According to estimates by the Bench Marks Foundation, roughly 30000 people live in informal settlements around the Marikana mine. They consist mostly of shacks made from corrugated iron sheeting and scavenged building scraps. The shacks do not offer adequate protection from cold and rain. They consist of only one or two rooms and are often overcrowded. Water needs to be drawn from communal taps. If there is electricity, it is sourced from

illegal connections to the grid. There is no adequate sanitation, a single latrine may be shared by up to 100 people and they are prone to overflowing. (Amnesty 2016, p. 46) The roads are unpaved and roads and houses are covered in dust from the mine. When it rains it is even worse, the dust turns into thick glutinous mud, water often needs to be physically pushed away from the shacks, waste and sewage escape channels that can otherwise be avoided.

Community activist Chris Molebatsi is concerned for the health of the community:

“The settlements just keep growing. There is no longer any land near water points and new areas cannot reach electricity supplies. Pit latrines are inadequate and poorly constructed. Raw sewage is a problem especially when it rains. There is supposed to be a programme to collect rubbish but it is inadequate and pigs and dogs live off the piles of waste. People are building right next to power lines and by vents from the shafts, exposing themselves to environmental hazards.”

When a mineworker washing his clothes outside his shack was asked what he thought of his living conditions, he replied: *“What do you want me to tell you that you can’t see with your own eyes? You think it’s a terrible way to live, yes? Well you learn to live here with your dignity. Look I am still washing my clothes. I can’t walk around like I don’t respect myself.”*

The settlements continue to grow despite significant job losses over the years. Some workers that have lost their jobs choose to stay on in the hope that they can find work again in the area, knowing that there are poor prospects at their rural home. Others have come to join those that they know from the labour-sending areas and are job seekers or unemployed.



Settlements extending upto the powerlines, but there is no electricity for shackdwellers in Wonderkop.

Lonmin’s and the South African government’s obligations to worker housing

The South African government and Lonmin hold a shared responsibility to ensure decent living conditions around the mine. Apart from international obligations such as the International Covenant on Economic, Social and Cultural Rights, and the UN Guiding Principles on Business and Human Rights, this responsibility is enshrined in South African law. Section 26 of the Constitution states “that everyone has the right to have access to adequate housing” and that “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.” The Constitutional Court interpreted the rights to have access to adequate housing as follows: *“Housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, and there must be a dwelling. The right of access to adequate housing also suggests that it is not only the State that is responsible for the provision of houses, but that other agents within society,*

including individuals themselves, must be enabled by legislative and other measures to provide housing.” (Government of the Republic of South Africa v Grootboom)

Since 2002, the South African mining charter requires companies to submit a SLP in order to receive a mining licence. The SLP outlines the mine’s commitments to transformation in terms of ownership, employment equity, skills development as well as to local socio-economic development in the areas in which they operate and labour-sending areas from which majority of the workforce is drawn. Mining companies were required to indicate in the SLP the type of housing currently provided and include measures for improving the standard of housing and living conditions of the workforce. (SLP Guidelines 2004) The SLP is a legally binding commitment to be monitored by the Department of Mineral Resources (DMR). It must be revised every five years. The Mining Charter adopted in 2002 required all mining companies to convert existing hostels to family and bachelor apartment units until 2014. The government has the obligation to enforce these provisions in order to comply with the constitution and with international human rights standards.

In its 2006 SLP Lonmin committed to convert 114 hostel blocks (changed to 128 in 2014) and build 5,500 new houses by 2011. By 2012, at the time of the massacre, only three houses had been built and 60 hostels converted. Hostel conversion improves the conditions for those who are allocated a unit after the conversion, but at the same time pushes numerous workers into informal settlements as units who previously accommodated up to 16 workers now accommodate one. Therefore after hostel conversion, more workers lived in informal settlements than beforehand. The Farlam Commission found that Lonmin “created an environment conducive to the creation of tension and labour unrest by failing to comply with the housing obligations undertaken by its two subsidiaries in the SLPs on the strength of which it obtained new order mining rights”. (Farlam Report, p. 556)

In 2014, Lonmin did eventually complete the hostel conversion as required by the Mining Charter and converted the remaining 68 hostels. Lonmin currently provides housing for about 3,000 in the converted hostels and in apartments built before 2006. (Amnesty, 2016, p. 14) However, this is by far not sufficient considering that according to Lonmin, there are 24,800 workers employed by Lonmin plus approximately 8000 contract workers. The Bench Marks Foundation estimates that at least 30,000 people live in informal settlements around the Marikana mine.

Lonmin submitted a revised SLP to the DMR in October 2014 where it abandoned the previous 5,500 house target, substituting it with ‘infill apartments’, high-density housing to be built alongside existing hostels, accessing infrastructure already in place. It did neither specify an exact number of apartments to be built nor a timeline. By January 2017, less than 500 apartments had been built. Many of these are not yet occupied as the rental amount Lonmin initially demanded was too high for workers to afford. According to Lonmin in July 2017 an agreement on rent was reached with AMCU. (Lonmin, 2017)

President Zuma stated in December 2016, two years after Lonmin revised its SLP, that the revision was unacceptable. He threatened to suspend or cancel Lonmin’s mining license in case the company does not submit a compliant housing plan. (Government Press statement, 2016) In response to the President’s threat, in January 2017, Lonmin’s CEO Ben Magara announced Lonmin would spend ZAR 500 million on infill apartments over five years, so at the end it would have 1,200 additional apartments. Lonmin also gave a tally of potential

developments. There was nothing new in this announcement, showing no deviation from the revised SLP that had been rejected.

Lonmin put forward several excuses for its insufficient action, none of which withstand scrutiny. The most important one is its own financial inability to execute its plan, particularly after the worldwide economic crisis in 2008. However the IFC of the of the World Bank Group made available USD 100 million in 2007, partly for Lonmin’s community development projects, a loan that Lonmin never accessed. (IFC, oil, gas and mining) In addition, a detailed report by AIDC shows that Lonmin’s subsidiary in Marikana has systematically been shifting profits to headquarters and to tax havens. (see box below)

Moreover, Lonmin claimed that workers were unwilling and financially unable to buy the houses. This may be true, but should have been recognized from the beginning and considered in planning. As most of the workers are migrants, it is not surprising and it was well-known to Lonmin that the majority (85 percent according to a Lonmin survey) prefer rental accommodation. (Amnesty, 2016, p. 30) This preference could have been addressed if Lonmin had included the workers and the community in design and implementation of its social



Lonmin has converted 128 hostel blocks into new housing units.



Mzoxolo Magidwana: Extract from the speech at the BASF AGM in Mannheim/Germany, 12 May 2017

I am Mzoxolo Magidwana. I am 29 years old. I started working at Lonmin in 2011. I am one of the workers who participated in the strike 2012, where 34 mine workers were massacred. I was hit with 9 bullets, with 2 going through my body and 7 were removed in the hospital. That's why they called me "dead man walking". It's a miracle how I survived. In 2012, we were on strike for living wages and better working- and living conditions at Lonmin. We expected Lonmin, our employer, to come to talk to us. Instead Lonmin called the police on us. Who then shot and killed our fellow comrades. I believe that this matter could have been resolved by Lonmin coming to us to tell us that Lonmin was unable to meet our demands or even to retrench some of us, but not to cause that we be killed, as if we were just animals.

What hurts me most is that I am a victim of the police brutality, and yet I face criminal charges for something I didn't do. I am a victim but I am treated like a perpetrator and nobody has been charged for shooting and killing us. Having given you this background let me speak on the current conditions: Since the massacre nothing much has changed. People still die

underground because of the pressure put on them by Lonmin to the benefit of its customers, which includes BASF.

We still have not achieved the living wage that we were demanding. There has not been any compensation for us as victims: the deceased, the widows, the orphans and the injured. As things stand today: Nobody in government or Lonmin has been charged for the massacre. Even as we speak today, the majority of the people that works at Lonmin live in tin shacks that are infested with rats. There is no running water in the households, just one tap for a lot of families, not all the areas have electricity and toilets are shared ones and just dug in the ground with no chemical treatment of the waste.

Under these conditions a life in dignity is not possible. It is my understanding that BASF is buying platinum from Lonmin for millions of Euros per month. We know that the management of Lonmin and BASF is making huge profits; we know that we dig out one of the most precious metals on Earth. What I wish to happen is that BASF put some pressure on Lonmin to resolve the problems with its workers. We just want to live in dignity - I cannot see that this wish is unreasonable.

targets. The SLP guidelines issued by DMR in 2010 also conformed that trade unions should be consulted on the five-year plan for the improvement of living conditions for workers. (SLP guidelines 2010) In 2017, Lonmin announced that it will conduct a joint housing strategy review together with AMCU that will include an employee accommodation census. (Creamer, 2017) According to AMCU, this is the first time Lonmin is involving the union in plans for worker housing.

The Farlam Commission also found that the government failed to adequately monitor the implementation of Lonmin's housing obligations. (Farlam report, p. 555) In the aftermath of the massacre, the President appointed an Inter-Ministerial Committee on the Revitalisation of Distressed Mining Communities, to address, among other issues, living conditions. (South Africa, 2014) North West premier Supra Mahumapelo committed ZAR

462 million for housing projects specifically in Marikana. He committed to building 2,000 housing units in three years (Brand South Africa, 2015), a target that has not been met in 2017. The Department of Human Settlements has delivered 544 housing units. However the rental units remain vacant, according to AMCU this is because workers cannot afford the rent. Handing over the units in January 2016, Minister of Human Settlements Lindiwe Sisulu spoke of a new target of 2,600 units which the ones already built were part of, but gave no date to complete the delivery. (South African Government, 2016) Apart from houses, for which the mining companies carry the main responsibility, the government has so far not sufficiently addressed the shortage of basic services such as water, electricity and sanitation but also public facilities as schools and health care. Informal settlements are considered temporary, no facilities are

provided for them, straining the resources for established local communities. The municipalities are aware that the lack of services degrades the environment. Combined with the environmental impact of mining, water and air pollution are most worrying. Water is polluted by run-off from slime dams and inadequate sewage, fumes from ventilation shafts, dust and sulphur dioxide emissions deteriorate air quality. (Makgetla/Levin, 2016)

Impact of Lonmin operations on local Communities

The mining and the informal settlements accommodating Lonmin workers heavily impact the lives of local communities who lived in the area already before mining activities started, such as the Wonderkop community which was formed in the 1920s by Black Africans who had been dispossessed of other land. (Bloom, 2017) There are a variety of issues ranging from the strain on resources caused by the influx of migrant workers and competition for jobs between migrants and locals to pollution from the mine and the loss of land due to the mine itself and the growing informal settlements. Some in the local community try to continue with their lives, herding cattle and goats in spaces



Sindiswa Bandezi

“I followed my sister to look for a job at Marikana. I dated someone I met here soon after I arrived, but he left in 2003 to go back home to his wife and

children in Mozambique. My son joined me here from the Eastern Cape to look for work at the mine three years ago but he wasn’t lucky and has now left to look for work in Durban. We live in an area where there is no water or electricity. For money I used to pick up scrap metal or plastic from around the shacks. I did this together with two other women and we split the cost of transport to take our collections in for recycling. I earned about ZAR 500 (EUR 30) every two weeks doing this. Last year I started selling traditional medicine for someone, now I know how to get the stock and I do it for myself, it is better because I can make some profit. Back home there are no opportunities to earn any money.”



Women in Marikana are traditionally responsible for household chores and childcare. In addition, they often have to take up paid work to supplement their partners wages.



Household chores are made more difficult by the lack of basic infrastructure like water, sanitation and electricity.

in between the informal settlements, but it is clear to see that their modest agrarian way of life has been irrevocably changed with the loss of ploughing and grazing fields.

David Ramohanoe, a former ward councillor from Wonderkop, shares his views: *“We have been very accommodating of the migrant workers in our communities. We have shared what little resources we have. Our schools and clinics are overburdened. It was local leadership at the municipal level that put water stands to service the informal settlements.”*

Young people from the local community have little prospects for jobs. Many feel that the mine should provide more job opportunities to locals rather than employing migrants and that the mine should support local business development generating local employment.

Wendy from the Marikana Unemployed Forum: *“People come here and they are only concerned about the migrant workers. They do not see us. We are lost in these shacks. But we have nowhere else to go, no homeland somewhere else. We need jobs and good prospects. But there are so many promises that never reach us, only benefitting a few.”*

Local activist, Chris Molebatsi, explains; *“The local community is subsidising the mine, they bear the social and environmental costs externalised by the mine especially the strain put on resources that it shares with the migrants to the area.”* Local communities like Wonderkop have also been denied adequate benefit or compensation for the

mining on their land. Multiple systems of segregation throughout the apartheid era have complicated land rights and claims. Blacks were not permitted to own land as individuals, land was held communally under traditional authorities, if at all.

As compensation for the use of the land, Lonmin and other mining companies have been paying 12 percent of its profit as annual royalties into an account supposed to be used for local development, managed by the North West Provincial government. (Boyle, 2016) However, this money has not benefitted the local community. Investigation into allegations of corruption and maladministration of the account concluded in June 2017 and found that the North West Provincial government had grossly mismanaged the fund. (Mathope, 2017) There were irregularities in tendering processes, millions had been misused in building a palace for the chief Bapo Ba Mogale and books for the account had not been submitted for auditing.

The Wonderkop Land Claim Committee (WLCC) lodged a claim for the land with the Land Claim Court and says that the Traditional Authority of the Wonderkop community, Bapo Ba Mogale, is dysfunctional, lacks legitimacy and does not have the capacity to undertake municipal services. (LRC, 2014)

Ramohanoe is the Chair of the WLCC and explains the lack of development: *“Because this is considered tribal land, historically right up to now residents have not had support for development and social services are poor. The municipality makes plans but does not have resources to do what they say they will do, so targets are not met. We are getting no compensation or benefit from the mine.”*

The main responsibility for this wrongdoing lies with the provincial government and the national South African government for failing to prevent the corruption and to ensure that the local community is adequately compensated for their loss of land. Yet Lonmin is also at fault, as it turned a blind eye to the corruption. On top of that, in 2014 Lonmin also reached an agreement with the traditional leaders of Bapo Ba Mogale, offering them ZAR 100 million in cash and ZAR 540 million in equity in Lonmin PLC in exchange for not paying the 12 percent royalties for community development. (Bloom, 2016)

This deal was favourable for Lonmin, because Lonmin had to meet the specific requirements of the Mining Charter to reach the 26 percent Black Economic Empowerment (BEE) target by 2014. However, BEE targets are supposed to be in addition to royalties. The deal was concluded without consulting the community.

Women's life in Marikana

Women suffer from the living and working conditions in and around Marikana in a distinct way. They are traditionally responsible for household chores, childcare and caring for sick or injured family members. This reproductive labor is a prerequisite for the mineworkers to be productive, particularly at low wages, yet it is unpaid and often unnoticed. (Benya, 2015)

Some of the wives and children of mineworkers have joined them in the informal settlements. However, the vast majority remain at their rural homes in the labor sending areas. Many mineworkers have taken girlfriends' in the shack settlement that are more like second wives, mostly poor women that have come to the area, some following family members to look for work and when they are unsuccessful, seek out a miner to provide for them in return for providing homely comforts. These women are in a precarious situation as they are not legally recognized as their partners' relatives, yet in fact are completely dependent on them economically. Sometimes miners have second families with these women. There are shacks occupied by women making a living in informal trade or doing washing or collecting recyclable waste. The 'girlfriends' expect that the man will return to his wife when

he leaves the mine. Thus there are aging 'former girlfriends' left behind, depending on their children or other family members to survive. Some mineworkers do not take responsibility for children they sire, and thus there are also younger single mothers looking after children.

The lack of basic infrastructure makes the care work done by women harder. Queuing for water takes up several hours of most days, often in the early morning starting from 2 am. The unpaved roads are inaccessible for vehicles when it rains, including emergency vehicles. In addition to performing reproductive labor, women often have to take up paid work in order to supplement their partners' insufficient wages. Sometimes their desperation pushes them into illegal income generating activities, such as selling cannabis. Other options to supplement wages, such as claiming government child support, are complicated due to the status of the women as girlfriends instead of wives. (Benya, 2015)

Moreover, women are at risk of sexual violence. A study in the Rustenburg municipality in 2015 reported that 25 percent of study participants had experienced rape in their lifetime and 50 percent had experienced some other form of sexual violence or intimate partner violence. (Medicines sans frontiers, 2016)



Sikhala Sonke Women's Organisation was formed directly after the massacre to unite the women of Wonderkop, Marikana, support the mineworkers and fight for justice.



Thumeka Magwangqana is the chair of the women's group Sikhala Sonke, which aims at empowering women in the community through skills training and community development projects.

Employment opportunities at the mines, which would put women on par with men economically, are limited and come with their own distinct dangers. The 2002 Mining Charter “urges that at least 10 percent of mining companies’ workforce must be female“. In 2015, women made up 9.54 percent of the workforce at Western Platinum Limited and 6.97 percent at Eastern Platinum Limited, falling short of Lonmin’s own target of 9.8 percent and 7.4 percent, respectively, which have already been lowered compared to earlier targets. (IFC complaint) The figures are lower for “core jobs”. (Lonmin SLP report 2015, p. 48) Women, who do work underground, face an exacerbated risk of being harassed, raped, or forced to perform sexual favors in exchange for promotion. (Nene, 2016) Their being in the minority in a traditionally male-dominated area makes them especially vulnerable. AMCU claims that many are being employed to work in jobs of poor quality underground to meet transformation scorecard requirements but that there is no effort to develop women so that they can occupy more skilled positions. A woman mineworker at

Lonmin that has been assaulted underground says that not enough has been done to ensure that women are well-integrated into work teams and remains concerned for women’s safety underground.

Another women mineworker said: *“Nothing prepares you for what it is like underground. The men are tough and they don’t think we should be there. They think it is not a place for women. It is even harder for us.”*

Many survivors do not report incidents of sexual violence for fear of stigmatization or job loss. In the cases that are reported, the conviction rate is extremely low at only 6,2 percent. (Nene, 2016)

World Bank involvement

In March 2007 the IFC, part of the World Bank Group, announced that it would give the company a USD 100 million loan repayable over ten years and spend up to USD 50 million to buy shares in Lonmin. The transaction was the IFC’s biggest ever in subSaharan Africa in the oil, gas and mining area. (IFC, 2007) The USD 100 million

loan and USD 15 million out of the USD 50 million spent on shares were supposed to be used in local economic development programs tied to Lonmin's SLP. The goal was to "build a long-term relationship with local communities and demonstrate the effects of sustainable development across Africa and worldwide". (IFC, 2007) But the 100 million was never actually accessed by Lonmin and cancelled in 2010. (CAO Assessment Report, 2015) Lonmin claims to have spent the USD 15 million on "Black Economic Empowerment Supplier Development, Gender, HIV/AIDS and Community Project". According to Lonmin, these programs enjoyed various degrees of success. (Lonmin 2017)

In 2015, after hearing about this loan, a women's group in Marikana, Sikhala Sonke, assisted by the Centre for Applied Legal Studies (CALS) used the established grievance mechanism of the IFC and took a complaint to its Compliance Advisor/Ombudsman (CAO). The complainants claim that "the IFC's investment was supposed to deliver substantial improvements in local economic

development and would mitigate the negative social impacts of the Marikana Mine. Eight years after the initial investment was made, it is transparently clear that no such benefits were delivered. To the contrary: life in the informal settlements around the Marikana Mine is dire. There is an absence of proper housing, proper sanitation, proper roads, and accessible and reliable running water. The air and ground-water in the local communities are polluted by the operations of the mine." (Complaint, 2015, p. 1)

Lonmin agreed to engage in a dispute resolution process facilitated by the Compliance Advisor/Ombudsman. Over ten months there were three meetings between Sikhala Sonke and Lonmin with minor commitments, which Lonmin did not keep. Lonmin refused to discuss core issues, pushing these to the back of the agenda, which included access to housing, water, and sanitation, and ensuring sound and effective environmental management, gender empowerment, education and BEE. (Nicolson 2016) In December 2016, Sikhala Sonke finally withdrew from the dispute resolution process.



Thumeka Magwangqana

"My life changed by what happened here in Marikana on 16 August 2012. We supported the striking workers demands, those were our men and our children. But we realised too late what was going to happen. I am now chair of Sikhala

Sonke, a women's group formed after the massacre. Women got together at first to provide support to the strikers immediately after the massacre. We attended the Marikana Commission, we felt a responsibility to bear witness to it and to see where this ends. Still now, we continue to seek out the truth on Marikana.

In 2014, the women supported the long strike; we even marched to management at the mine to say that they must give in to the demands of workers and end the strike because it was affecting the whole community. It was very bad, there was no money, we had no food but we shared what we had when we could, even if it was not enough. The strike firmed our resolve to get something going for women here. Our experience when the men were on strike was that we all had nothing. Many

are girlfriends, not wives, and we got to experience the reality that one day the men they are with will go home and then they will suffer. Sikhala Sonke needs to be a chance for women to get some skills and to be able to work for themselves so that they don't have to depend on someone else. We have democracy for all, but our government is only there for half, saying one thing and doing another. We were promised a better life for all, but it is only better for some. People are dying every day because of what we have not been able to achieve. What I know is we are still living in shacks and life is not better. At the memorial service in 2012, Minister Thandi Modise said that this place would not be called Marikana anymore and from this day forward it would be called Kanaan, which means the 'promised land'. She said we were going to get everything we need. But still we suffer. Nothing has improved for us, our roads are terrible and our living conditions are awful. Many of us have no access to electricity and water so they have to live in the dark and walk to neighbouring areas to collect water. We live with the stench of sewage in our homes from the pits we have to use as toilets in our yards. When it rains we have to deal with the mud in our homes and the leaks in our roofs.

Sikhala Sonke Chair, Thumeka Magwangqana: “We were hopeful, for the first time we were able to sit at the table with Lonmin finally as community members. But there was no progress. Lonmin wouldn’t talk about serious issues like housing. After a year and a half we withdrew from the dispute resolution because we were getting nowhere.” (Strike A Rock Documentary, 2017)

Through its investment the IFC itself is also responsible for the adverse human rights impact caused by Lonmin’s activities. At least 35 million dollars of the IFC investment were used towards Lonmin’s business activities, (CAO Complaint 2015, p. 4 and p. 15) the IFC still holds about 0,6 percent of Lonmin shares. (CAO Complaint 2015, p. 4 and p. 15) The complaint lodged by Sikhala Sonke shows how the IFC did not comply with its own “Sustainability Policy”, which is supposed to safeguard the institution from contributing to adverse human rights impact, as it “failed properly to monitor its investment, failed properly to ensure that its policies and standards were adhered to throughout the life of the investment, and/or failed properly to ensure that its provisions, whether or not complied with, provided an adequate level of protection to the communities affected by Lonmin’s ongoing activities.” (CAO Complaint, 2015, p. 15)

Environmental impact

As detailed in an analysis by the Bench Marks Foundation in 2013, between 2003 and 2012 Lonmin repeatedly failed to adhere to the environmental standards in South Africa or meet its own targets to mitigate its environmental impact. (BMF, 2013) The main issues under scrutiny were air pollution by dust and by Sulphur Dioxide (SO₂), and soil and groundwater pollution by Calcium Sulphite (CaSO₃). SO₂ emissions are a driver behind acid rain, they can lead to acute and chronic lung diseases. (BMF, 2013, p. 34) CaSO₃ is a poisonous acid sludge and the result of a chemical treatment of SO₂ performed in order to reduce the emission. The Bench Marks Foundation report shows how Lonmin’s SO₂ emissions constantly increased between 2004 and 2010, from approximately 7.4 tons/day to 14.1 tons/day. The legal limit was 4.8 tons/day until 2005, and has then been increased gradually to 17.9 tons/day in 2012. (BMF, 2013, p. 34, 35) There is no explanation for this increase, suggesting that the government might have introduced it in order to protect Lonmin. (BMF, 2013, p. 38) Between 2010 and 2012 SO₂



Lonmin mining operations also have a negative effect on the environment: dust and sulphur dioxide pollute the air, calcium sulphite ends up in the groundwater.

emissions decreased, however, this is a result of a pollution trade-off as it has only been achieved due to a new “Sulphur Fixation Plant” which converts SO₂ to CaSO₃. (BMF, 2013, p. 36) Lonmin’s 2016 Sustainable Development Report shows that SO₂ emissions went up and down between 2012 and 2016, with an all-time high of 13.6 tons/day in 2016. (Lonmin SDR 2016 P. 97) It is unclear whether this is the result of the 27 percent decrease in the generation of CaSO₃ which is also reported. (Lonmin SDR 2016 P. 94) Lonmin claims to research alternative solutions to reduce SO₂ emissions or to convert CaSO₃ into gypsum for the production of cement. This was first reported in 2012 and is repeated in 2016 (Lonmin SDR 2016 P. 94), however there seems to be no progress. Concerning dust emissions, the 2016 report mentions no figures on legal limits, targets or actual emissions at all, continuing the trend already visible in the Bench Marks report for 2003-2012 of using very unspecific language. This makes us assume that legal limits are still regularly exceeded.

Chapter 3

Who's responsible?

The above chapters have made clear that the situation in Marikana five years after the massacre is still in large parts a mess: So far there has been no justice for the massacre that cost 34 workers their lives. The victims are still waiting for compensation and nobody has been held legally responsible for the killings. While strong union organization and enduring workplace battles between the Union AMCU and Lonmin have led to a slight increase in real wages, the living conditions for workers and communities around the mine are still appalling: Approximately 30,000 people are still living in shacks. The groups of people affected are complex and include the local communities, the migrant workers, their families and the victims of the Massacre. Equally complex are the stakeholders that play a part in contributing to the problems in Marikana: the state authorities, the local mining company Lonmin plc and its parent company Lonmin in London and even further down the line the German company BASF, who is the main buyer of platinum coming from the mine. This has led to some confusion as to who is responsible for addressing the problems around housing, infrastructure, working conditions and the compensation of the victims of the massacre with each entity pointing to the other.

This scenario is typical for large-scale business investments, especially in the mining sector. Existing national standards are often ignored by business; state authorities don't adequately enforce labor, social and environmental standards and ignore their own obligations. Parent companies and buyers deny any responsibility for problems caused by subsidiaries and suppliers.

So far there are no international legally binding human rights standards for global business activities; however in 2011, the Human Rights Council of the United Nations endorsed the UN Guiding Principles on Business and Human Rights: they are a set of guidelines for states and companies to prevent, address and remedy human rights abuses committed in business operations. The state obligations described in the first pillar of the UN Guiding Principles reaffirm the existing human rights obligations of states to protect people against infringements on their rights by corporations through regulation, policymaking, investigation and enforcement. The second pillar establishes a responsibility for corporations to ensure that their business activities adhere to national laws and do not adversely impact human rights. This covers not only human rights abuses that a company causes or contributes to, but also entails



Currently, approximately 30,000 people are living in informal settlements around the mine.

a responsibility for the supply chain. To prevent adverse impact, companies must adopt a human rights policy, conduct human rights due diligence and provide remedies. Human rights due diligence means that an in-depth risk analysis must be carried out in consultation with those potentially affected. Where risks have been identified, the company must take appropriate action to mitigate these risks. This includes exercising leverage over suppliers and business partners. Actions taken or planned must be communicated to stakeholders. The third pillar obliges both states and corporations. Independently from each other, they must ensure that those suffering from adverse human rights impact of business activities have access to effective judicial and non-judicial grievance mechanisms.

Bearing in mind these international obligations and the national standards in South Africa, the following sections will look at the responsibility of the South African state, the mining company Lonmin and the German Company BASF more closely and identify where they have failed to meet their specific responsibilities and what needs to happen in the future.



The shacks in Wonderkop informal settlement often only consist of one room, there is no electricity, water or sanitary facilities.

State responsibility

It was the South African police force that shot down the miners in August 2012. So the government has the obligation to investigate what happened, prosecute the state officials responsible and compensate the victims. It took three years for the report of the Marikana Commission of Inquiry to be completed and released. While this report contains some important findings on the role of the police and Lonmin, concerning the criminal liability of the police officers, it recommends further investigations by the National Prosecuting Authority. However, until today nobody has been held legally responsible for the massacre. The victims have not received any compensation and some of the families of those deceased are still struggling to survive. Besides legal justice, the people in Marikana are still waiting for an acknowledgement and a public apology for the massacre.

Beyond Justice for the Marikana Massacre, the South African state also has a legal obligation to improve living conditions in Marikana, including the provision of adequate housing and other basic services. This is enshrined in the International Convention on Economic, Social and Cultural Rights and in the South African constitution. With the mining charter, the state has transferred part of this obligation to the mining companies. The mining charter was first adopted in 2002 to improve housing and living conditions in the mining sector, foster community development and ensure meaningful economic participation of black persons. Mining companies are obliged to submit a SLP in order to receive a mining licence. The SLP outlines the mine's commitments to transformation in terms of ownership, employment equity, skills development as well as to local socio-economic development in the areas in which they operate and labor-sending areas from which majority of the workforce is drawn. The mining charter was revised in 2010 and 2017 and in the current mining charter, adopted in June 2017, the government recognizes that many of the objectives of the former mining charters have not been achieved, for example it states that proliferation of communities living in abject poverty continues to be largely characteristic of the surroundings of mining. The revised mining charter is meant to address these problems.

However, when looking at the situation in Marikana, it becomes evident that many of the problems do not lie in weak legislation but in the lack of enforcement towards Lonmin. Lonmin made strong commitments on



Children and goats play amongst the rubbish in the scrub around the mine

housing, water and sanitation in its SLP. However these commitments stayed un-transparent, until today Lonmin's SLP is not public. Lonmin's reporting on the SLP implementation is difficult to follow and not very informative. The workers and the community were not involved in the development or implementation and the state authorities did not monitor or enforce the commitments sufficiently. An extensive study by the Centre for Applied Legal Studies at the University of the Witwatersrand, which was released in May 2016, found that these problems are symptomatic for the mining industry: communities affected by mining are not consulted about the SLPs and most of the promises made are neither monitored nor kept. (CALS, 2016)

The revised mining charter does not address this sufficiently, for example there are no provisions on transparency of SLPs and community involvement in the design and implementation.

The state did not shift the complete responsibility for the living conditions in Marikana to Lonmin. Basic services like water, sanitation, schools and hospitals

remain state responsibility and housing efforts by Lonmin must be complemented by state programs to facilitate housing. According to international human rights obligations and the South African constitution, the state must invest maximal available resources in ensuring these human rights. The DMR acknowledged this responsibility but implementation is still withstanding. At a Parliamentary Committee meeting to assess socio-economic conditions of mineworkers in 2015, Joel Raphela from the DMR spoke of collaboration "*between the private sector, mining companies and government in the provision of basic services*". (Parliamentary Monitoring Group, 2015) Lonmin stated in 2017 that there has been engagement with municipality on services but that the response has been "limited". (Lonmin 2017)

Demands to the South African government

- **Ensure justice for Marikana:** the South African government must arrest and prosecute police officers that were responsible for the massacre. Government must formally issue a public apology for the massacre

Shrinking space for civil society

Marikana marked a turning point in the political landscape in South Africa and many argue that South Africa is reverting to a repressive state. (Duncan, 2016) At least government expenditure points that way: 70 percent of the government wage bill in 2015/16 went to the police, the army and prison system – in other words, the security cluster. (Statistics South Africa, 2017) At the same time, the South African government is expanding less open methods of repression like surveillance and legislative reforms. This is hugely significant in a country that faces so many deep social issues – health, education, transportation, food insecurity, housing, water. The ruling party in South Africa, ANC, is experiencing a continuous loss of support. The election in 2014 saw the emergence and strengthening of parties both to the left and right flank of the ANC – with the right-wing liberal DA gaining 25 percent and the EFF, a breakaway from the ANC gaining 6 percent in those elections.

The harassment of activists and social movements by state security agencies poses a major threat to civil society and closing spaces for debates and engagement within the broader society. (Heinrich Böll Stiftung, p. 18)

This repressive climate has also become evident in the aftermath of Marikana Massacre.

One example is the arrest and imprisonment of Napoleon Webster, an activist from the political party Economic Freedom Fighters. He earned the reputation as

rabble-rouser extraordinaire when in June 2015 he interrupted a speech by President Jacob Zuma at Tshwane University of Technology, shouting, “But police killed people at Marikana”. This incident added to mounting pressure on Zuma to release the Farlam Commission report. Webster was arrested in January 2017 for a murder committed a month earlier of an ANC leader in Marikana allegedly over allocation of housing that had been built by the government. However several witnesses made statements that he was in another part of town at the time of the murder (Nicolson, 2017). In a statement on his 100th day in prison Webster writes, “We, the ordinary people are in jail everywhere in this maximum security prison called South Afrika.” (Webster, 2017) He remains in prison awaiting trial.

Bishop Seoka visited Webster in April 2017;

“I sat with Napoleon on Thursday, his 104th day in jail, knowing he is an innocent man and that the police have not done their job in investigating this crime. I asked myself whether Napoleon is deliberately being targeted because his presence was making life difficult for someone or certain groups in Marikana. Napoleon is a member of the Economic Freedom Fighters, the party to which the ANC lost their majority in Marikana in the 2014 elections. I believe this is a politically motivated arrest and that the charges should be dropped and Napoleon released immediately. I have decided to write a letter to the National Director of Public Prosecutions to ask that he inspects Napoleon’s arrest and incarceration.” (Seoka, 2017)



of people by the police. Government must fulfil their commitment made to pay a compensation of 1.17 billion ZAR to the families of the deceased and other victims of the massacre.

- **End repression and criminalisation of civil society:** The South African government must ensure the right to assembly and freedom of opinion; end repression and prosecution of protests, reform public order policing standing orders and protocols, including the inappropriateness of using automatic rifles and live ammunitions.
- **Stop illicit financial flows:** The South African government must put an end to transfer pricing, tax evasion and other illicit financial flows, and champion such regulation at a continental and global level.
- **Enforce social and labour plans and ensure transparency:** The government must link the mining concession to the fulfilment of the commitments Lonmin made in its SLP 2006. If Lonmin does not comply with the commitments made in 2006 the government must withdraw the mining licence. The government should oblige all mining corporations to place their commitments made in the SLPs on their websites and lodge them with the South African Human Rights Commission (SAHRC).
- **Consultation and participation:** The South African government must consult communities on the effectiveness of SLPs and BEE requirements to assess what has been achieved in the ten to twelve years since these have been instituted and consider alternative targets in the Mining Charter. The government must require an agreement between the companies, communities and organised labour on the SLP targets as a condition for approval of SLPs.
- **Improve housing and infrastructure in Marikana:** The government must invest maximal available resources in housing and infrastructure for mining communities. Basic services like water, sanitation, schools and hospitals remain state responsibility and housing efforts by Lonmin must be complemented by state programs to facilitate housing.

Lonmin's obligations

As direct operators of the Mine in Marikana, Lonmin's South African Subsidiaries Lonmin Western Platinum Limited and Eastern Platinum Limited are responsible

for improving working and living conditions in Marikana. The parent company in Lonmin however fully controls these subsidiaries and is equally responsible for ensuring adherence to national and international standards by its subsidiaries.

Lonmin's handling of the situation in Marikana before and after the massacre has been deficient and neither complies with South African law or the standards set in the UN Guiding Principles on Business and Human Rights. According to the Farlam Commission, Lonmin's failure to comply with their housing obligations and the refusal to speak to the striking workers contributed to the conflict which led to the massacre. (Farlam report, p. 556) The UN Guiding Principles on Business and Human Rights state clearly in principle 22 that a company that contributes to human rights abuses should provide for or cooperate in their remediation. Lonmin has so far not compensated the victims of the Marikana massacre. Until today, Lonmin has failed to comply with its SLP of 2006 which was a requisite to receive the mining concession. From the 5,500 new houses it was legally required to build, Lonmin has so far only built 500 houses. In its new SLP submitted to the Department of Mineral Resources in 2014, Lonmin abandoned the target of 5,500 houses. The wage increases Lonmin has agreed to do not sufficiently take into account the inflation rate and therefore do not amount to a significant increase of real wages.

Principle 18 of the UN Guiding Principles requests business to consult potentially affected groups when assessing adverse impacts. Principle 21 expects business to communicate how they are planning to address human rights risks. Lonmin has also made a poor show in consulting communities on their housing needs and participating communities in the development of social targets. On the contrary, Lonmin has been intransparent about its SLP targets and has tried to cover up slow progress. Neither the SLP from 2006 nor the revised SLP are public. Principle 29 of the UN Guiding Principles on Business and Human Rights requests businesses to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted. Lonmin so far has no effective grievance mechanism for affected communities.

Demands to Lonmin

- **Provide adequate housing options to workers,** including ownership in labour sending areas and subsidized rental accommodation at the workplace. The housing

Lonmin's profit shifting practices

Lonmin has claimed repeatedly that they do not have the money to pay higher wages or fulfil their commitments made in the SLP. Responding to a question at the Farlam Commission in August 2014 on why Lonmin did not meet the housing targets set out in the SLP, former Non-Executive Director of Lonmin, Cyril Ramaphosa, said "This project faced quite a number of constraints, financial resources was one of them." But were Lonmin's finances in 2012 really in such a bad state that they could not afford decent wages and fulfil their social obligations?

During their enquiries after the Marikana Massacre, the Farlam Commission took Lonmin's financials under scrutiny. What came to light were a high number of financial transfers to subsidiaries abroad, especially to a subsidiary in the Bermudas. The Alternative Information Development Centre (AIDC) undertook further investigations and claims that from 2008 to 2012 Lonmin transferred USD 160 million (ZAR 1.2 billion) in commission fees from its Marikana operations to a subsidiary, Western Metals Sales Limited based in Bermuda, which is a known tax haven and a further USD 155million (ZAR 1.2 billion) was paid in management fees to Lonmin Management Services. (AIDC, 2014)

This practice of shifting profits, which is currently not illegal, has devastating effects on local economies: money is moved to head office and tax havens so that it is not included in taxable income and to avoid meeting wage demands and commitments made in SLPs. Transfer pricing also moves money away from BEE minority shareholders. They expect to be paid dividends from the local subsidiaries - where they hold shares.

"All this matters because it is Western Platinum (the Marikana mine operations) that has committed to a Social Labour Plan for the surrounding mining community, not the parent company Lonmin Plc, and excessive invoicing of a South African subsidiary, legal or not, reduces this subsidiary's ability to pay for this, and for wages." (Dick Forslund, AIDC)

In 2015, AIDC also made a submission to the Davis Tax Committee (DTC), a special committee set up in 2013 to advise the Finance Minister on Tax Reform chaired by Judge Dennis Davis. (AIDC submission 2015) So far, South African government has taken no further steps to monitoring and counteract transfer pricing in companies like Lonmin and is thus failing in its duty to protect workers and mining communities that are fed tales of unaffordability by mining companies.

targets must be developed in consultation with workers and the communities, however Lonmin must at the least comply with the targets in the 2006 SLP and provide 5,000 additional houses or apartments.

- **Address basic social services and infrastructure needs**, such as access to piped water, sewage systems, tarred roads and electricity together with the municipality and the community, seeking out a range from immediate to long-term solutions.
- **Be more transparent:** make available SLPs to communities and other interested or impacted groups in easily digestible language; localise sustainability reporting per operation; account to local communities and public at large the amount of resources (taxes, royalties, fees, tax concessions) that are paid and the amount of profits expatriated and be open to outside scrutiny and auditing by non-governmental organisations selected service provider.
- **Compensate surrounding communities** that have been negatively impacted upon by mining operations in a fair transparent manner that takes into account the mineral wealth under the ground and the loss of grazing land and direct negative impact on peoples livelihood development.
- **Increase wages** taking into account the living costs of workers due to the high inflation rate in South Africa.
- **Significantly reduce the use of contract workers** and ensure that their needs are included in worker housing considerations.
- **Increase the number of women in the workforce**, develop separate facilities for women such as change rooms, health and safety examinations.
- **Apologize:** recognize its role in the escalation of violence in August 2012 and issue a public and genuine apology to those who have lost family members and friends and those who have been injured during the massacre.

- **Compensate the victims of the massacre:** Bench Marks Foundation argues that such compensation should be in the region of twenty years wages that workers would have earned had they not been killed or critically injured exercising their right to organize.
- **Stop illicit financial flows:** put an end to transfer pricing, tax evasion and other illicit financial flows.
- **Support the establishment of a grievance mechanism:** Contribute financially on a large and tangible basis to the community problem solving service planned by Bench Marks Foundation, which will combine capacity building for communities with conciliation, mediation and arbitration in conflicts between communities and mining companies. Agree to using this service for conflicts with the community.

Supply chain responsibility: How BASF comes into play

The German company BASF is Lonmin's most important customer, buying more than 50 percent of their annual production - worth more than EUR 450 million. According to BASF's CEO Kurt Bock, close business ties have existed for over thirty years. Long-term contracts have just been renewed last year. (Buchen, 2016) BASF uses the platinum that they buy from Lonmin to produce catalysts which are used in cars. BASF's catalyst division, with a sales volume of EUR 6,263 billion, makes approximately 11 percent of the companies overall sales. (BASF annual report 2016, p. 74) In addition to its own production, BASF also trades platinum.

BASF claims to combine economic success with environmental and social responsibility, and to respect international human rights standards, including supply chain responsibility. (BASF, N.D.)

In 2016 a study commissioned by The Greens/EFA group in the European Parliament revealed that BASF has avoided EUR 923 million in taxes. (Auerbach, 2016) BASF has also faced charges for the manipulation of the world market price of platinum by Modern Settings LLC, a Florida-based maker of jewelry and police badges, at a US court. The claims were dismissed in March 2017, however this was in large parts because of a lack of ties to the US and because the plaintiffs were not "efficient enforcers" of the relevant law. (Stempel, 2017) In 2011 there was another court case against BASF with allegations of price manipulation in regard to the chemical isocyanide, which ended

in an out of court settlement. (Greenwood, 2011) In 2001, BASF was fined heavily by the European Union for price fixing as part of a vitamin cartel. (The Guardian, 2001)

With this obvious focus on low market prices it is not surprising that BASF has not made the adherence to human rights and national law a core condition of further dealings with Lonmin. The following overview reveals that BASF is failing to comply with the international standards described in the UN Guiding Principles on Business and Human Rights. The Guiding Principles require all companies to conduct human rights due diligence, i.e. identify risks of human rights violations in their own activities and along their supply chains, take action to mitigate adverse impacts and properly communicate with those affected. Even in the absence of a legal responsibility for the massacre and for the overall situation in Marikana, the company is what the UN Guiding Principles for Business and Human Rights term "non-legally complicit" as they profit from Lonmin's abuses which allow keeping prices low. (UNGPs, commentary to principle no. 17)



BASF is a German chemical company and Lonmin's most important customer: BASF buys more than 50 percent of the platinum sourced at Marikana.

How has BASF reacted so far?

When the massacre of Marikana happened, BASF's first reaction was to do absolutely nothing. The massacre should have been an eye-opener and incentive to look more closely at working and living conditions in Marikana. Instead BASF kept quiet, presumably hoping that their ties to the events in South Africa would not be discovered. However, BASF was confronted with the situation in Marikana by Bishop Seoka, chair of Bread for the World Partner Organization Bench Marks Foundation in South Africa at their shareholders' meeting in April 2015. The company responded that the situation was "difficult to assess from the distance". (Buchen, 2016)

In November 2015, together with the chemistry industry business initiative "Together for Sustainability" BASF commissioned an audit on Lonmin. (BASF, 2017) Although there were publically available NGO-Reports and numerous complaints on the precarious living conditions around the mine and the failure of Lonmin to comply with their legal obligations from the SLP, the audit focused solely on the situation at the mine. According to BASF, weaknesses were identified relating to fire safety and complaint mechanisms, but not in the areas of human rights, corporate governance or working conditions. Neither the majority union AMCU, nor relevant NGOs were consulted in this audit

Despite being asked repeatedly to make the audit transparent, BASF only published a short summary on their website. According to BASF's website, all issues identified have been resolved in cooperation with Lonmin. (BASF 2017)

In May 2016, following an invitation by Bread for the World, KASA and other organizations, a delegation from South Africa travelled to Germany, including two widows of the killed miners and Bishop Seoka from Bench Marks Foundation to inform the German public about the Massacre of Marikana and the situation in and around the mine four years later. The delegation also visited the shareholder meeting of BASF and asked BASF to take steps to improve the situation in Marikana. BASF was also invited repeatedly by Bench Marks Foundation to send a delegation to Marikana and see the situation first-hand.

In 2016, BASF finally followed this invitation and a BASF delegation travelled to Marikana. In May a stakeholder conference was organised and in December they conducted a business conference with most of the platinum producers present to find joint solutions for the

social development in the platinum belt. Although Bench Marks Foundation asked to attend to give input, participation was declined. According to BASF the companies at the table agreed to be more transparent on their corporate social responsibility efforts and work together to implement the SLPs and promote inclusive development in the platinum belt. So far, however, there is no public information on who took part at the meeting and which steps were agreed on. Up to date, Lonmin has still not published its SLP.

After being strongly criticized for ignoring the appalling living conditions around the mine and not conducting a broader risk assessment, BASF commissioned a second audit in January 2017 including questions on living conditions. This time BASF cooperated with Twenty-Fifty, a consultancy specialized in human rights and stakeholder engagement. (BASF 2017) Neither the audit questions, the methodology or the results have been made public or shared with relevant organizations and unions in Marikana.

Audits in general, particularly social audits, have been widely criticized for being a fig leaf. Studies have shown that in most cases, audits are ineffective even as a mere diagnostic tool due to methodological constraints and cannot replace a meaningful and transparent stakeholder engagement. (Lebaron/Lister 2015; Terwindt/Saage-Maaß 2016) Moreover, even the best audit can only identify problems - acting to resolve them is a separate task. For example BASF must use its influence as main buyer to ensure that Lonmin fulfills its SLP commitments, reduces environmental damage and pays living wages, for example by including this in business contracts with Lonmin. So far BASF merely includes a reference in the contract to its supplier code of conduct which requests adherence to human rights standards.

The UN Guiding Principles on Business and Human Rights also request businesses to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted by their business activities. BASF has been repeatedly asked to contribute to a community capacity building and conflict solution mechanism, but so far the company has not actively engaged in this initiative.

On the contrary, BASF does not seem prepared to engage any further: When a South African delegation, including union leader Joseph Mathunjwa, visited the annual shareholders' meeting for the third time in May 2017, BASF-CEO Kurt Bock reacted coldly and avoided

the questions, reducing the issues presented to a question about blame for the massacre even though the problems addressed in the speeches of the delegation were much broader and concerned BASF's responsibility to improve conditions in Marikana today. (Plough Back The Fruits Campaign, 2017)

BASF's first steps in 2016 to actually look into the problems in Marikana gave hope that the company was prepared to take their supply chain seriously and find solutions. However 2017, five years after the massacre, BASF seems to have taken a step back: Not only was CEO Kurt Bock not willing to engage with the demands of the delegation, he also discouraged any future appearances of the delegation at the annual shareholder meetings. It is not clear whether BASF plans further activities to follow up on the business conference in December and the audit in January. Until today, BASF's website hardly offers any information on the relation with Lonmin and on their strategy to address human rights issues along the supply chain. The little information on Lonmin and the Marikana Massacre specifically can only be found through the search function.

While BASF's business is going well and profits are rising (SWR, 2017), the people working at Marikana mine are still struggling to improve living and working conditions. To live up to its supply chain responsibility, BASF must use its leverage over Lonmin as one of its most important business partners. Looking the other way is not an option.

Demands to BASF:

- **BASF must put pressure on Lonmin** to publish and implement their SLPs, especially to consult the communities and fulfill their commitments in regard to housing, e.g. by including adherence to national law, particularly the SLP, and international human rights standards in their binding business contracts with Lonmin, instead of relying on a supplier code of conduct that is ultimately toothless.
- **BASF must replace auditing** by a meaningful stakeholder consultation with communities, NGOs and trade unions.
- **BASF must continue their dialogue** with South African platinum companies and with civil society



Joseph Mathunjwa, President of the AMCU, Extract from the speech at the BASF AGM, Mannheim/Germany, 12 May 2017

After this massacre neither Lonmin nor the Government have made any efforts to improve working and living conditions of the workers or to compensate the injured or those left behind. It took another 5 months strike to get higher wages and better working conditions. These improvements only apply to the workers who are directly employed by Lonmin, not for the 15,000 contract workers. In the shafts, several miners have been killed and we still experience fatalities in the working environment. The few houses that Lonmin has built on its own compound are too expensive for the workers who are now working for Lonmin. Only because of AMCU's Marikana Massacre Trust Fund the widows of the killed miners receive an annual allocation of ZAR 12,500 - this is about EUR 860 - the monthly salary that their husbands were striking to achieve.

What does this have to do with BASF? BASF is the biggest consumer of Lonmin platinum. According to your code of conduct you want to be a responsible corporate citizen. We understand that you have commissioned audits of Lonmin and that you initiated consultations in the Business to Business (B2B) sector. Unfortunately we were not involved before or after the auditing process and we do not know the results of it, or those of the B2B consultations. We know that the Lonmin audit is a confidential document. But how can a document that is not shared with us be a solution to our problems? How will you involve the various stakeholders, including the communities and unions, in your various initiatives? Are you planning any concrete measures to improve the working and living conditions? Are you going to make a gesture of goodwill and contribute to the Marikana Solidarity Fund that can help develop the infrastructure and contribute to raising a memorial? I hope that your commitment means more than empty words.



Plough Back the Fruits: A collective painting by the widows of Marikana illustrating their situation and addressing BASF, painted in February 2016

organizations and Unions including the Bench Marks Foundation, the SERITI Foundation and AMCU on holistic ways to develop socially responsible mining and broad based community development.

- **BASF must be more transparent on the steps it takes:** it must publish audit results and consult them with NGOs in South Africa and Germany; it must also publish and consult results of stakeholder and business meetings and state clearly which further steps are planned.
- **BASF should actively support the establishment of a capacity building and grievance mechanism:** BASF should contribute financially, e.g. via a fixed percentage per each purchased ounce of platinum, to the Bench Marks Foundation Independent Problem Solving Service based on facilitated dialogue using expert facilitators acceptable to communities and companies as a novel way to resolve ongoing problems. This is backed up by the Independent Capacity Building Fund, allowing communities access to specialized expertise and enabling them to effectively organize themselves. A meaningful contribution to these services would demonstrate BASF's seriousness to sustainably improve conditions on the ground.

“Plough back the fruits”- Campaign

The “Plough back the fruits” campaigning network consists of South African and European NGOs and activists, including Bread for the World and Bench Marks Foundation. In a globalized economy, transnationally operating companies have to comply with international human rights standards, most prominently the UN Guiding Principles for Business and Human Rights, along the whole supply chain. Plough back the fruit puts public attention and pressure on the two transnational companies Lonmin and their main customer BASF to implement and adhere to human rights standards. For example, the network brought South African delegations to the annual shareholders’ meetings of BASF and Lonmin, organized speakers tours to raise awareness and met with representatives of BASF for dialogue. (<https://basflonmin.wordpress.com>)

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